

1 Gary A. Hecker (CSB No. 099008)  
2 ghecker@munckwilson.com  
3 MUNCK WILSON MANDALA, LLP  
4 1925 Century Park East, Suite 2300  
5 Los Angeles, CA 90067  
6 Telephone: 310.286.0377

7 S. Wallace Dunwoody (*Pro Hac Vice*)  
8 wdunwoody@munckwilson.com  
9 Jordan C. Strauss (*Pro Hac Vice*)  
jstrauss@munckwilson.com  
MUNCK WILSON MANDALA, LLP  
12770 Coit Road, Suite 600  
Dallas, TX 75251  
Telephone: 972.628.3600

**Counsel for Plaintiff**

10 J. David Hadden (State Bar No. 176148)  
dhadden@fenwick.com  
11 Saina S. Shamilov (State Bar No. 215636)  
sshamilov@fenwick.com  
12 Ravi R. Ranganath (State Bar No. 272981)  
rranganath@fenwick.com  
13 Silicon Valley Center  
14 801 California Street  
15 Mountain View, CA 94041  
Tel: (650) 988-8500  
Fax: (650) 938-5200

**Counsel for Defendant**

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 CEIVA OPCO, LLC,

Civil Action No. 2:22-cv-02709-AB-MAA

20 Plaintiff,

21 v.

22 AMAZON.COM, INC.,

**STIPULATED PROTECTIVE ORDER**

23 Defendant.

The Hon. Maria A. Audero

1       **1. PURPOSES AND LIMITATIONS**

2       Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter  
6 the following Stipulated Protective Order. The parties acknowledge that this  
7 Stipulated Protective Order does not confer blanket protections on all disclosures or  
8 responses to discovery and that the protection it affords from public disclosure and  
9 use extends only to the limited information or items that are entitled to confidential  
10 treatment under the applicable legal principles. The parties further acknowledge, as  
11 set forth in Section 13.3 below, that this Stipulated Protective Order does not entitle  
12 them to file confidential information under seal; Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a party  
14 seeks permission from the Court to file material under seal. Discovery in this action  
15 is likely to involve production of confidential, proprietary, or private information for  
16 which special protection from public disclosure and from use for any purpose other  
17 than prosecuting this litigation may be warranted.

18     **2. GOOD CAUSE STATEMENT**

19     This action is likely to involve business, financial, technical and/or other  
20 proprietary information for which special protection from public disclosure and from  
21 use for any purpose other than prosecution of this action is warranted. Such  
22 confidential and proprietary materials and information consist of, among other  
23 things, highly sensitive technical documents describing the design and operation of  
24 the accused products and/or products alleged to practice and/or embody the patents-  
25 in-suit, source code related to these products, confidential business, strategy, and  
26 financial information, or other confidential research, development, or commercial  
27 information (including information implicating privacy rights of third parties), and  
28 other information otherwise generally unavailable to the public, or which may be

privileged or otherwise protected from public disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

### **3. DEFINITIONS**

- 3.1. Action: This pending federal lawsuit, Civil Action No. 2:22-cv-02709-AB-MAA.
  - 3.2. Challenging Party: A Party or Nonparty that challenges the designation of information or items under this Stipulated Protective Order.
  - 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.
  - 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as their support staff).
  - 3.5. Designating Party: A Party or Nonparty that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

- 1       3.6. Disclosure or Discovery Material: All items or information, regardless  
2       of the medium or manner in which it is generated, stored, or  
3       maintained (including, among other things, testimony, transcripts, and  
4       tangible things), that is produced or generated in disclosures or  
5       responses to discovery in this matter.
- 6       3.7. Expert: A person with specialized knowledge or experience in a  
7       matter pertinent to the litigation who has been retained by a Party or its  
8       counsel to serve as an expert witness or as a consultant in this Action,  
9       and who is not an employee of a party to this Action or an affiliate of a  
10      party to this Action.
- 11      3.8. In-House Counsel: Attorneys who are employees of a party to this  
12      Action. In-House Counsel does not include Outside Counsel of  
13      Record or any other outside counsel.
- 14      3.9. Nonparty: Any natural person, partnership, corporation, association,  
15      or other legal entity not named as a Party to this action.
- 16      3.10. Outside Counsel of Record: Attorneys who are not employees of a  
17      party to this Action but are retained to represent or advise a party to  
18      this Action and have appeared in this Action on behalf of that party or  
19      are affiliated with a law firm which has appeared on behalf of that  
20      party, and includes support staff.
- 21      3.11. Party: Any party to this Action, including all of its officers, directors,  
22      employees, consultants, retained experts, In-House Counsel, and  
23      Outside Counsel of Record (and their support staffs).
- 24      3.12. Producing Party: A Party or Nonparty that produces Disclosure or  
25      Discovery Material in this Action.
- 26      3.13. Professional Vendors: Persons or entities that provide litigation  
27      support services (e.g., photocopying, videotaping, translating,  
28      preparing exhibits or demonstrations, and organizing, storing, or

1 retrieving data in any form or medium) and their employees and  
2 subcontractors.

- 3 3.14. Protected Material: Any Disclosure or Discovery Material that is  
4 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL  
5 SOURCE CODE.”
- 6 3.15. Receiving Party: A Party that receives Disclosure or Discovery  
7 Material from a Producing Party.
- 8 3.16. Source Code: Computer code that defines, in an applicable  
9 programming language, the algorithms, function or structure of  
10 software. Source code includes source code, object code (i.e.,  
11 computer instructions and data definitions expressed in a form suitable  
12 for input to an assembler, compiler, or other translator), microcode,  
13 register transfer language (“RTL”), firmware, and hardware  
14 description language (“HDL”), as well as any and all programmer  
15 notes, annotations, and other comments accompanying the code. For  
16 avoidance of doubt, this includes, but is not limited to, source files,  
17 make files, intermediate output files, executable files, header files,  
18 resource files, library files, module definition files, map files, object  
19 files, linker files, browse info files, debug files, and files containing  
20 source code in C, C++, BREW, Java ME, J2ME, assembler, digital  
21 signal processor (DSP) programming languages, VHDL, Verilog,  
22 other HDL formats, and any other human readable text programming  
23 languages. Source code does not include documents that describe  
24 algorithms or structure of software but that do not include code in a  
25 programming language. To the extent documents (for example,  
26 PowerPoints or Word documents) contain lines of source code, the  
27 Producing Party may elect to redact the lines of Source Code in the  
28 document—labeled “Redacted Source Code”—and will otherwise

1 produce the document in the normal course of discovery. In the event  
2 the Producing Party elects to redact Source Code from documents, the  
3 non-redacted versions of those documents will be placed on the Source  
4 Code Computer for review by the Receiving Party.

5 3.17. “HIGHLY CONFIDENTIAL SOURCE CODE” Information or Items:  
6 Protected Material reflecting or comprising non-public Source Code of  
7 a producing party.

8 **4. SCOPE**

9 The protections conferred by this Stipulated Protective Order cover not only  
10 Protected Material, but also (1) any information copied or extracted from Protected  
11 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
12 and (3) any testimony, conversations, or presentations by Parties or their Counsel  
13 that might reveal Protected Material.

14 Any use of Protected Material at trial shall be governed by the orders of the  
15 trial judge. This Stipulated Protective Order does not govern the use of Protected  
16 Material at trial.

17 **5. DURATION**

18 The Order applies to pretrial discovery. Nothing in this Order shall be deemed  
19 to prevent the Parties from introducing any Protected Material into evidence at the  
20 trial of this Action, or from using any information contained in Designated Material  
21 at the trial of this Action, subject to any pretrial order issued by this Court. Subject  
22 to any challenges under paragraph 7, the Parties will not oppose any reasonable  
23 request by the Producing Party that the courtroom be sealed, if allowed by the Court,  
24 during the presentation of any testimony, evidence, or argument relating to or  
25 involving the use of any Protected Material.

26 Even after final disposition of this litigation, the confidentiality obligations  
27 imposed by this Stipulated Protective Order shall remain in effect until a Designating  
28 Party agrees otherwise in writing or a court order otherwise directs. Final disposition

1 shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
2 Action, with or without prejudice; and (2) final judgment herein after the completion  
3 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
4 including the time limits for filing any motions or applications for extension of time  
5 pursuant to applicable law.

6 **6. DESIGNATING PROTECTED MATERIAL**

7 **6.1. Exercise of Restraint and Care in Designating Material for Protection.**

8           Each Party or Nonparty that designates information or items for  
9 protection under this Stipulated Protective Order must take care to  
10 limit any such designation to specific material that qualifies under the  
11 appropriate standards. The Designating Party must designate for  
12 protection only those parts of material, documents, items, or oral or  
13 written communications that qualify so that other portions of the  
14 material, documents, items, or communications for which protection is  
15 not warranted are not swept unjustifiably within the ambit of this  
16 Stipulated Protective Order.

17           Mass, indiscriminate, or routinized designations are prohibited.  
18 Designations that are shown to be clearly unjustified or that have been  
19 made for an improper purpose (*e.g.*, to unnecessarily encumber the  
20 case development process or to impose unnecessary expenses and  
21 burdens on other parties) may expose the Designating Party to  
22 sanctions.

23 **6.2. Manner and Timing of Designations.**

24           Except as otherwise provided in this Stipulated Protective Order  
25 (*see, e.g.*, Section 6.2(a)), or as otherwise stipulated or ordered,  
26 Disclosure or Discovery Material that qualifies for protection under  
27 this Stipulated Protective Order must be clearly so designated before  
28 the material is disclosed or produced.

Designation in conformity with this Stipulated Protective Order requires the following:

- (a) For information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

A Party or Nonparty that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Stipulated Protective Order. Then, before producing the specified documents, the Producing Party must affix the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL SOURCE CODE” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

- (b) For testimony given in depositions, that the Designating Party

1                   identify the Disclosure or Discovery Material on the record,  
2                   before the close of the deposition, all protected testimony.

- 3                   (c) For information produced in nondocumentary form, and for any  
4                   other tangible items, that the Producing Party affix in a  
5                   prominent place on the exterior of the container or containers in  
6                   which the information is stored the legend “CONFIDENTIAL.”  
7                   If only a portion or portions of the information warrants  
8                   protection, the Producing Party, to the extent practicable, shall  
9                   identify the protected portion(s).

10                  6.3. Inadvertent Failure to Designate.

11                  If timely corrected, an inadvertent failure to designate qualified  
12                  information or items does not, standing alone, waive the Designating  
13                  Party’s right to secure protection under this Stipulated Protective Order  
14                  for such material. Upon timely correction of a designation, the  
15                  Receiving Party must make reasonable efforts to assure that the  
16                  material is treated in accordance with the provisions of this Stipulated  
17                  Protective Order.

18                  7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19                  7.1. Timing of Challenges.

20                  Any Party or Nonparty may challenge a designation of  
21                  confidentiality at any time that is consistent with the Court’s  
22                  Scheduling Order.

23                  7.2. Meet and Confer.

24                  The Challenging Party shall initiate the dispute resolution  
25                  process, which shall comply with Local Rule 37.1 et seq., and with  
26                  Section 4 of Judge Audero’s Procedures (“Mandatory Telephonic  
27  
28

1 Conference for Discovery Disputes").<sup>1</sup>

2 7.3. **Burden of Persuasion.**

3 The burden of persuasion in any such challenge proceeding shall  
4 be on the Designating Party. Frivolous challenges, and those made for  
5 an improper purpose (*e.g.*, to harass or impose unnecessary expenses  
6 and burdens on other parties) may expose the Challenging Party to  
7 sanctions. Unless the Designating Party has waived or withdrawn the  
8 confidentiality designation, all parties shall continue to afford the  
9 material in question the level of protection to which it is entitled under  
10 the Producing Party's designation until the Court rules on the  
11 challenge.

12 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

13 8.1. **Basic Principles.**

14 A Receiving Party may use Protected Material that is disclosed  
15 or produced by another Party or by a Nonparty in connection with this  
16 Action only for prosecuting, defending, or attempting to settle this  
17 Action. Such Protected Material may be disclosed only to the  
18 categories of persons and under the conditions described in this  
19 Stipulated Protective Order. When the Action reaches a final  
20 disposition, a Receiving Party must comply with the provisions of  
21 Section 14 below.

22 Protected Material must be stored and maintained by a  
23 Receiving Party at a location and in a secure manner that ensures that  
24 access is limited to the persons authorized under this Stipulated  
25 Protective Order.  
26

---

27 <sup>1</sup> Judge Audero's Procedures are available at  
28 <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1           8.2. Disclosure of “CONFIDENTIAL” Information or Items.

2           Unless otherwise ordered by the Court or permitted in writing  
 3           by the Designating Party, a Receiving Party may disclose any  
 4           information or item designated “CONFIDENTIAL” only to:

- 5           (a) The Receiving Party’s Outside Counsel of Record, as well as  
               employees of said Outside Counsel of Record to whom it is  
               reasonably necessary to disclose the information for this Action;
- 6           (b) The officers, directors, board members, and employees  
               (including In-House Counsel) of the Receiving Party to whom  
               disclosure is reasonably necessary for this Action;
- 7           (c) Experts of the Receiving Party to whom disclosure is reasonably  
               necessary for this Action and who have signed the  
               “Acknowledgment and Agreement to Be Bound” (Exhibit A).  
               Before access is given, the Expert shall complete the  
               “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
               and the same shall be served upon any producing Party with a  
               current curriculum vitae of the consultant or expert at least ten  
               (10) days before access to the Protected Material is to be given  
               to that consultant.<sup>2</sup> However, the producing Party may notify

---

2           For any such person, the curriculum vitae shall identify his/her (i) current  
 employer(s), (ii) each person or entity from whom s/he has received compensation  
 or funding for work in his or her areas of expertise or to whom the s/he has  
 provided professional services, including in connection with a litigation, at any time  
 during the preceding five years; (iii) (by name and number of the case, filing date,  
 and location of court) any litigation in connection with which s/he has offered  
 expert testimony, including through a declaration, report, or testimony at a  
 deposition or trial, during the preceding five years; and (iv) and an identification of  
 any patents or patent applications in which the technical advisor is identified as an  
 inventor or applicant, is involved in prosecuting or maintaining, or has any  
 pecuniary interest. If such consultant or expert believes any of this information is

the receiving Party in writing that it objects to disclosure of Protected Material to a consultant or expert. The producing Party waives objection to disclosure of its Designated Material by a receiving Party to an identified outside consultant or expert of a receiving Party if the Producing Party provides no written objection within ten (10) days of service by a receiving Party of the Exhibit A and current curriculum vitae of the identified outside consultant or expert. Such a waiver shall not preclude a Producing Party from raising an objection at a later time with respect to Protected Material if a party believes in good faith that newly disclosed or discovered information about the expert, had it been known at the time the outside consultant or expert was disclosed, would have warranted such an objection. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the producing Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The producing Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;

(d) The Court and its personnel;

25 subject to a confidentiality obligation to a third-party, then the s/he should provide  
26 whatever information can be disclosed without violating any confidentiality  
27 agreements, and the Party seeking to disclose Protected Material to the consultant  
28 or expert shall be available to meet and confer with the designating Party regarding  
any such engagement.

- (e) Court reporters and their staff;
  - (f) Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);
  - (g) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
  - (h) During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (ii) the witness will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and
  - (i) Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**8.3. Disclosure of “HIGHLY CONFIDENTIAL SOURCE CODE” Information or Items.**

For Source Code designated HIGHLY CONFIDENTIAL  
SOURCE CODE, access to, and disclosure of, such Source Code shall  
be limited to individuals listed in paragraph 8.2 above, and the

1 following additional restrictions apply:

- 2 (a) Access to a Party's Source Code shall be provided only on  
3 "stand-alone" computer(s) (that is, the computer may not be  
4 linked to any network, including a local area network ("LAN"),  
5 an intranet or the Internet). The standalone computer shall be a  
6 current vintage, Windows-based laptop or desktop computer  
7 having at least 4 gigabytes of memory, shall have a mouse, and  
8 a screen with a minimum size of fifteen inches, and shall be  
9 connectable to a second screen supplied by the receiving party at  
10 the receiving party's option. The stand-alone computer(s) may  
11 only be located within the continental United States at the  
12 offices of the producing Party's outside counsel or another  
13 agreed-upon location.
- 14 (b) The stand-alone computer(s) shall have disk encryption and be  
15 password protected. Use or possession of any outside electronic  
16 input/output device (e.g., USB memory stick, mobile phone,  
17 tablet, personal digital assistants (PDAs), Blackberries,  
18 Dictaphones, voice recorders, external or portable telephone  
19 jack, camera or any camera-enabled device, CD, floppy disk,  
20 portable hard drive, laptop, or any device that can access the  
21 Internet or any other network or external system, etc.) is  
22 prohibited while accessing the computer containing the source  
23 code. All persons entering the locked room containing the  
24 stand-alone computer(s) must agree to submit to reasonable  
25 security measures to ensure they are not carrying any prohibited  
26 items before they will be given access to the stand-alone  
27 computer(s). The producing Party may periodically "check in"  
28 on the activities of the receiving Party's representatives during

any stand-alone computer review and may visually monitor the activities of the receiving Party's representatives from outside the room in which the stand-alone computer(s) is located, but only to ensure that no unauthorized electronic records of the Source Code and no information concerning the Source Code are being created or transmitted in any way. The producing Party must remain at such a distance as to avoid viewing notes or other work product generated by the receiving Party's representatives and at such a distance to allow representatives of the receiving Party's to carry on a quiet conversation without being overheard by the producing Party. The producing Party may not record (visually, audibly or by other means) the activities of the receiving Party's representatives.

- (c) Source Code will be made available for inspection between the hours of 9:00 a.m. and 5:00 p.m. (in the time zone where the Source Code is made available) on business days (i.e., weekdays that are not Federal holidays), although the Parties will be reasonable in accommodating reasonable requests to conduct inspections at other times;
- (d) A list of names of persons who will review Source Code on the stand-alone computer(s) will be provided to the producing Party in conjunction with any written (including email) notice requesting inspection. Prior to the first inspection of any Source Code made available by the Producing Party, the receiving Party shall provide five (5) days' notice that it wishes to inspect Source Code. The receiving Party shall provide three (3) days' notice prior to any additional inspections. Such notice shall include the names and titles for every individual from the

1 receiving Party who will attend the inspection. The producing  
2 Party may maintain a daily log of the names of persons who  
3 enter the locked room to view the source code and when they  
4 enter and depart. To the extent practical and reasonable, the  
5 Parties agree to accommodate requests for inspection on a  
6 shorter timeframe, particularly when the needs of the case and  
7 case schedule require more immediate access by the receiving  
8 Party to the requested Source Code. Similarly, the receiving  
9 Party shall make good faith efforts to reasonably accommodate  
10 scheduling limitations identified by the producing Party;

- 11 (e) The producing Party shall provide the receiving Party with  
12 information explaining how to start, log on to, and operate the  
13 stand-alone computer(s) in order to access the produced Source  
14 Code on the stand-alone computer(s);  
15 (f) The producing Party will produce Source Code in computer  
16 searchable format on the stand-alone computer(s) as described  
17 above;  
18 (g) Access to any Party's Protected Material designated HIGHLY  
19 CONFIDENTIAL SOURCE CODE shall be limited to outside  
20 counsel and up to four (4) Experts retained for the purpose of  
21 this litigation and approved to access such Protected Materials  
22 pursuant to paragraph 3.14 above. A receiving Party may  
23 include excerpts of Source Code in a pleading, exhibit, expert  
24 report, discovery document, deposition transcript, or other Court  
25 document (hereinafter, "Source Code Documents") only to the  
26 extent necessary, provided that the Source Code Documents are  
27 appropriately marked under this Order, restricted to those who  
28 are entitled to have access to them as specified herein, and, if

1 filed with the Court, filed under seal in accordance with the  
2 Court's rules, procedures and orders;

- 3 (h) To the extent portions of Source Code are quoted in a Source  
4 Code Document, either (1) the entire Source Code Document  
5 will be stamped and treated as HIGHLY CONFIDENTIAL  
6 SOURCE CODE or (2) those pages containing quoted Source  
7 Code will be separately stamped and treated as HIGHLY  
8 CONFIDENTIAL SOURCE CODE. However, for clarity,  
9 production documents describing how source code operates (for  
10 example, architecture documents, program manuals, process  
11 flow descriptions, PowerPoint presentations, etc.) may not be  
12 stamped as HIGHLY CONFIDENTIAL SOURCE CODE solely  
13 for the purpose of limiting access to such documents. To the  
14 extent any documents (for example, PowerPoints, Word  
15 documents, architecture documents, etc.) contain lines of source  
16 code, the producing Party may elect to redact only the lines of  
17 Source Code in the document and must otherwise produce the  
18 document (including any discussion, analysis or commentary of  
19 any Source Code) in the normal course of discovery. In the  
20 event the producing Party elects to redact Source Code from  
21 documents, the non-redacted versions of those documents must  
22 be placed on the stand-alone computer for review by the  
23 receiving Party. Further, if the receiving Party elects to print  
24 such non-redacted source code documents from the stand-alone  
25 computer, only pages containing source code will count toward  
26 any printing limitations contained herein. Alternatively, a  
27 producing Party may elect to produce the entirety of a document  
28 containing lines of Source Code in the normal course of

1 discovery with a designation of “HIGHLY CONFIDENTIAL  
2 SOURCE CODE.”

- 3 (i) Except as set forth in this paragraph, no copies of Source Code  
4 shall be made without prior written consent of the producing  
5 Party. The receiving Party may create an electronic copy or  
6 image of limited excerpts of Source Code only to the extent  
7 necessary in a pleading, exhibit, expert report, discovery  
8 document, deposition transcript, other Court document, or any  
9 drafts of these documents. The receiving Party shall only  
10 include such excerpts as are reasonably necessary for the  
11 purposes for which such part of the Source Code is used. Images  
12 or copies of Source Code shall not be included in  
13 correspondence between the parties (references to production  
14 numbers shall be used instead) and shall be omitted from  
15 pleadings and other papers except to the extent permitted herein.  
16 The receiving party may create an electronic image of a selected  
17 portion of the Source Code only when the electronic file  
18 containing such image has been encrypted using commercially  
19 reasonable encryption software including password protection.  
20 Notwithstanding the foregoing, the receiving Party may file  
21 under seal printed Source Code with the Court via the ECF  
22 system without encryption. The communication and/or  
23 disclosure of electronic files containing any portion of Source  
24 Code shall at all times be limited to individuals who are  
25 authorized to see Source Code under the provisions of this  
26 Protective Order. Additionally, all electronic copies must be  
27 labeled “HIGHLY CONFIDENTIAL SOURCE CODE.” No  
28 person shall copy, e-mail, transmit, upload, download, print,

1 photograph or otherwise duplicate any portion of the designated  
2 “HIGHLY CONFIDENTIAL SOURCE CODE” material,  
3 except that the receiving Party may request paper copies  
4 (“Source Code Printouts”) of limited portions of the Source  
5 Code, but only if and to the extent reasonably necessary for the  
6 preparation of court filings, pleadings, expert reports, or other  
7 papers, or for deposition or trial. The receiving Party shall be  
8 permitted to print 500 pages total from the stand-alone computer  
9 (per producing Party). Furthermore, the receiving Party may  
10 print up to 50 contiguous pages. The receiving Party will only  
11 print material that it believes reasonably necessary to the claims  
12 and defenses at issue. If the receiving Party reasonably believes  
13 that it is necessary to print more than set forth by these limits,  
14 the parties shall meet and confer in good faith to resolve the  
15 issue. To ensure the proper pages requested by the receiving  
16 Party are printed, the producing Party shall provide the ability  
17 for the receiving Party to save relevant files for printing as PDFs  
18 (preserving the line numbers and formatting using a program  
19 such as Notepad++) to a folder on the source code review  
20 computer for printing, or any other similar arrangement agreed  
21 to by the parties. The receiving Party shall not request paper  
22 copies for the purposes of reviewing the source code other than  
23 electronically as set forth in this paragraph. Within three (3)  
24 business days, the producing Party will mail, or within five (5)  
25 business days will deliver, the requested material on  
26 watermarked or colored paper bearing Bates numbers and the  
27 legend “HIGHLY CONFIDENTIAL SOURCE CODE” unless  
28 objected to as discussed below. At the receiving Party’s request,

1 up to three (3) additional sets, for a total of four sets of printed  
2 Source Code may be requested and provided by the producing  
3 Party in a timely fashion. Printouts of Source Code may be  
4 made only by the producing Party, and such printouts must  
5 include (1) directory path information and filenames from which  
6 the Source Code came, and (2) line numbers. For avoidance of  
7 doubt, the receiving Party may make copies of Source Code for  
8 service to the Court to the extent requested or required by Court  
9 or chamber rules.

- 10 (j) If the receiving Party's outside counsel or Experts obtain Source  
11 Code Printouts, the receiving Party shall ensure that such  
12 outside counsel, consultants, or experts keep the Source Code  
13 Printouts under their direct control in a secured locked area in  
14 the offices of such outside counsel or Experts. The receiving  
15 Party may also temporarily keep the Source Code Printouts at:  
16 (i) the Court for any proceedings(s) relating to the Source Code,  
17 for the dates associated with the proceeding(s); (ii) the sites  
18 where any deposition(s) relating to the Source Code are taken,  
19 for the dates associated with the deposition(s); and (iii) if in a  
20 secured locked container, any intermediate location reasonably  
21 necessary to transport the Source Code Printouts (e.g., a hotel  
22 prior to a Court proceeding or deposition); and
- 23 (k) A producing Party's Source Code may only be delivered by the  
24 receiving Party at the direction of a person authorized to view  
25 Source Code, on paper via hand carry. If reasonably necessary,  
26 the receiving Party may choose to transport Source Code via  
27 courier, including Fedex or UPS. Source Code may not be  
28 transported or transmitted over a network of any kind, including

1 a LAN, an intranet, or the Internet. Source Code may only be  
2 transported for the purpose of Court proceeding(s) and filings,  
3 expert reports, or deposition(s) or trial, as set forth in this  
4 paragraph and is at all times subject to the transport restrictions  
5 set forth therein.

- 6 (l) The producing Party shall install tools that are sufficient for  
7 viewing and searching the Source Code produced, on the  
8 platform produced. The receiving Party's outside counsel  
9 and/or experts may request that other mutually agreeable  
10 commercially available software tools for viewing and searching  
11 Source Code be installed on the stand-alone computer, provided,  
12 however, that such other software tools are reasonably necessary  
13 for the receiving Party to perform its review of the source code  
14 consistent with all of the protections herein. The receiving Party  
15 must provide the producing Party with a copy of such licensed  
16 software tool(s) at least three (3) business days in advance of the  
17 date upon which the receiving Party wishes to have the  
18 additional software tools available for use on the stand-alone  
19 computer. To the extent any requested commercially available  
20 software tool(s) can be downloaded from the Internet, the  
21 receiving Party will provide the producing Party with a link or  
22 URL at least three (3) business days in advance of the date upon  
23 which the receiving Party wishes to have the additional software  
24 tools available for use on the stand-alone computer.  
25 (m) The receiving Party's outside counsel and/or Experts shall be  
26 entitled to take notes relating to the Source Code but may not  
27 copy any portion of the Source Code into the notes. No copies  
28 of all or any portion of the source code may leave the room in

which the source code is inspected. Further, no other written or electronic record of the source code is permitted except as otherwise provided above. No notes shall be made or stored on the inspection computer, or left behind at the site where the inspection computer is made available, and any such notes shall be deleted or destroyed by the producing Party, without reviewing the substance of the notes, upon discovery; and

- (n) All copies of any portion of the Source Code Printouts in whatever form shall be securely destroyed if they are no longer in use. Copies of Source Code Printouts that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers;
- (o) For the avoidance of doubt, printing of Source Code shall not be used as a substitute for review of the Source Code in the first instance on the Source Code Computer.

**9. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL SOURCE CODE” that Party must:

- (a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective

1 Order; and

- 2 (c) Cooperate with respect to all reasonable procedures sought to be  
3 pursued by the Designating Party whose Protected Material may be  
4 affected.

5 If the Designating Party timely seeks a protective order, the Party served with  
6 the subpoena or court order shall not produce any information designated in this  
7 action as “CONFIDENTIAL” before a determination by the Court from which the  
8 subpoena or order issued, unless the Party has obtained the Designating Party’s  
9 permission. The Designating Party shall bear the burden and expense of seeking  
10 protection in that court of its confidential material and nothing in these provisions  
11 should be construed as authorizing or encouraging a Receiving Party in this Action  
12 to disobey a lawful directive from another court.

13 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
14 **PRODUCED IN THIS LITIGATION**

15 10.1. Application.

16 The terms of this Stipulated Protective Order are applicable to  
17 information produced by a Nonparty in this Action and designated as  
18 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL SOURCE  
19 CODE.” Such information produced by Nonparties in connection with  
20 this litigation is protected by the remedies and relief provided by this  
21 Stipulated Protective Order. Nothing in these provisions should be  
22 construed as prohibiting a Nonparty from seeking additional  
23 protections.

24 10.2. Notification.

25 In the event that a Party is required, by a valid discovery  
26 request, to produce a Nonparty’s confidential information in its  
27 possession, and the Party is subject to an agreement with the Nonparty  
28

1                   not to produce the Nonparty's confidential information,<sup>3</sup> then the Party  
2                   shall:

- 3                   (a) Promptly notify in writing the Requesting Party and the  
4                   Nonparty that some or all of the information requested is subject  
5                   to a confidentiality agreement with a Nonparty;
- 6                   (b) Promptly provide the Nonparty with a copy of the Stipulated  
7                   Protective Order in this Action, the relevant discovery  
8                   request(s), and a reasonably specific description of the  
9                   information requested; and
- 10                  (c) Make the information requested available for inspection by the  
11                  Nonparty, if requested.

12                  10.3. Conditions of Production.

13                  If the Nonparty fails to seek a protective order from this Court  
14                  within fourteen (14) days after receiving the notice and accompanying  
15                  information, the Receiving Party may produce the Nonparty's  
16                  confidential information responsive to the discovery request. If the  
17                  Nonparty timely seeks a protective order, the Receiving Party shall not  
18                  produce any information in its possession or control that is subject to  
19                  the confidentiality agreement with the Nonparty before a  
20                  determination by the Court. Absent a court order to the contrary, the  
21                  Nonparty shall bear the burden and expense of seeking protection in  
22                  this Court of its Protected Material.

23  
24                  

---

25                  <sup>3</sup> If requested information is subject to a protective order entered by another Court,  
26                  then production will only occur with permission of the nonparty, or upon issuance  
27                  of an order by the other court that materials covered under that court's protective  
28                  order may be produced. The party to this case will bear the burden of contacting the  
                nonparty seeking permission, and will not oppose proceedings before the other  
                court, but the requesting party will bear the burden of seeking approval from the  
                other court to access the requested materials.

1       **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3 Protected Material to any person or in any circumstance not authorized under this  
4 Stipulated Protective Order, the Receiving Party immediately must (1) notify in  
5 writing the Designating Party of the unauthorized disclosures, (2) use its best  
6 efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the  
7 person or persons to whom unauthorized disclosures were made of all the terms of  
8 this Stipulated Protective Order, and (4) request such person or persons to execute  
9 the “Acknowledgment and Agreement to be Bound” (Exhibit A).

10       **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
11       **PROTECTED MATERIAL**

12           When a Producing Party gives notice to Receiving Parties that certain  
13 inadvertently produced material is subject to a claim of privilege or other  
14 protection, the obligations of the Receiving Parties are those set forth in Federal  
15 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
16 whatever procedure may be established in an e-discovery order that provides for  
17 production without prior privilege review. Pursuant to Federal Rule of Evidence  
18 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
19 of a communication or information covered by the attorney-client privilege or work  
20 product protection, the parties may incorporate their agreement in the Stipulated  
21 Protective Order submitted to the Court.

22       **13. MISCELLANEOUS**

23        13.1. Right to Further Relief.

24           Nothing in this Stipulated Protective Order abridges the right of  
25 any person to seek its modification by the Court in the future.

26        13.2. Right to Assert Other Objections.

27           By stipulating to the entry of this Stipulated Protective Order, no  
28 Party waives any right it otherwise would have to object to disclosing

1 or producing any information or item on any ground not addressed in  
2 this Stipulated Protective Order. Similarly, no Party waives any right  
3 to object on any ground to use in evidence of any of the material  
4 covered by this Stipulated Protective Order.

5 13.3. Filing Protected Material.

6 A Party that seeks to file under seal any Protected Material must  
7 comply with Local Rule 79-5. Protected Material may only be filed  
8 under seal pursuant to a court order authorizing the sealing of the  
9 specific Protected Material at issue. If a Party's request to file  
10 Protected Material under seal is denied by the Court, then the  
11 Receiving Party may file the information in the public record unless  
12 otherwise instructed by the Court.

13 13.4. Export Control.

14 Absent agreement, a Party's Designated Material must be stored  
15 and maintained by a receiving Party at a location in the United States  
16 and in a secure manner that ensures that access is limited to persons  
17 authorized under this Order. Absent agreement, Designated Material  
18 may not be exported outside the United States or released to any  
19 foreign national (even if within the United States), unless the foreign  
20 national (1) is a Green Card holder, (2) working in the United States  
21 pursuant to an H-1B visa sponsored by the receiving Party's law firm,  
22 or (3) directly employed by the receiving Party's law firm to provide  
23 support or legal representation to the firm's clients and who are  
24 otherwise unaffiliated with the receiving Party. Should any  
25 Designated Material be subject to export outside of the United States  
26 upon agreement of the parties, the receiving party shall comply with  
27 such laws and agrees not to knowingly export, re-export or transfer the  
28 Designated Material of the producing party without first obtaining all

1 required United States or any other applicable authorizations or  
2 licenses.

3 **13.5 Preparation or Prosecution of a Patent Application**

4 Absent obtaining written consent from the designating Party,  
5 any attorney representing a Party and any person associated or  
6 affiliated with the Party and permitted to receive the other Party's  
7 Protected Material that is designated CONFIDENTIAL and/or  
8 HIGHLY CONFIDENTIAL SOURCE CODE (collectively "Highly  
9 Sensitive Material"), who actually learns of, in whole or in part, the  
10 other Party's Highly Sensitive Material directed to technical  
11 information relevant to this case, but excluding financial data or non-  
12 technical business information under this Order, unless such Highly  
13 Sensitive Material becomes publicly disclosed or otherwise known,  
14 shall not prepare, prosecute, supervise, or assist in the preparation or  
15 prosecution of any patent application or patent claims pertaining to the  
16 claimed subject matter in United States Patent Nos. 6,442,573,  
17 9,203,930, 9,124,656, and 9,654,562 and any patent or application  
18 claiming priority to the patents asserted in this Action (collectively the  
19 "Field of Invention") during the pendency of this Action and for two  
20 (2) years after its conclusion, including any appeals. For purposes of  
21 this paragraph, "prosecution" includes any activity related to (i) the  
22 preparation or prosecution (for any person or entity) of patent  
23 applications, including among others reexamination and reissue  
24 applications or (ii) directly or indirectly participating, drafting,  
25 amending, advising, or otherwise affecting the scope or maintenance  
26 of patent claims within, for example, original prosecution, reissue,  
27 *inter partes* review, post grant review, covered business method  
28 review and reexamination proceedings. For the avoidance of doubt,

1           this paragraph does not prohibit any person from challenging a patent  
2           in *inter partes* review or other post-grant proceeding nor does it  
3           prohibit counsel for a Party from participating in and representing such  
4           Party in any *inter partes* review or other post-grant proceeding,  
5           provided they do not participate in amending any claims. To ensure  
6           compliance with the purpose of this provision, each Party shall create  
7           an “Ethical Wall” between those persons with access to Highly  
8           Sensitive Material and any individuals who, on behalf of the Party or  
9           its acquirer, successor, predecessor, or other affiliate, prepare,  
10          prosecute, supervise or assist in the preparation or prosecution of any  
11          patent application pertaining to the Field of Invention.

12          **14. FINAL DISPOSITION**

13          After the final disposition of this Action, within sixty (60) days of a written  
14          request by the Designating Party, each Receiving Party must return all Protected  
15          Material to the Producing Party or destroy such material. As used in this  
16          subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
17          summaries, and any other format reproducing or capturing any of the Protected  
18          Material. Whether the Protected Material is returned or destroyed, the Receiving  
19          Party must submit a written certification to the Producing Party (and, if not the  
20          same person or entity, to the Designating Party) by the 60-day deadline that  
21          (1) identifies (by category, where appropriate) all the Protected Material that was  
22          returned or destroyed and (2) affirms that the Receiving Party has not retained any  
23          copies, abstracts, compilations, summaries or any other format reproducing or  
24          capturing any of the Protected Material. Notwithstanding this provision, Counsel is  
25          entitled to retain an archival copy of all pleadings; motion papers; trial, deposition,  
26          and hearing transcripts; legal memoranda; correspondence; deposition and trial  
27          exhibits; expert reports; attorney work product; and consultant and expert work  
28          product, even if such materials contain Protected Material. Any such archival

1 copies that contain or constitute Protected Material remain subject to this Stipulated  
2 Protective Order as set forth in Section 5.

3 **15. VIOLATION**

4 Any violation of this Stipulated Order may be punished by any and all  
5 appropriate measures including, without limitation, contempt proceedings and/or  
6 monetary sanctions.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**  
3  
4

Dated: August 12, 2022

5 By: */s/ Gary A. Hecker*  
6 Gary A. Hecker (CSB No. 099008)  
7 ghecker@munckwilson.com  
8 **MUNCK WILSON MANDALA, LLP**  
9 1925 Century Park East, Suite 2300  
10 Los Angeles, CA 90067  
11 Telephone: 310.286.0377  
12  
13 S. Wallace Dunwoody (Pro Hac Vice)  
14 wdunwoody@munckwilson.com  
15 Jordan C. Strauss (Pro Hac Vice)  
16 jstrauss@munckwilson.com  
17 **MUNCK WILSON MANDALA, LLP**  
18 12770 Coit Road, Suite 600  
19 Dallas, TX 75251  
20 Telephone: 972.628.3600  
21 **Counsel for Plaintiff**  
22  
23 By: */s/ Dargaye Churnett*  
24 J. DAVID HADDEN (CSB No. 176148)  
25 dhadden@fenwick.com  
26 SAINA S. SHAMILOV (CSB No. 215636)  
27 sshamilov@fenwick.com  
28 RAVI R. RANGANATH (CSB No. 272981)  
rranganath@fenwick.com  
29 **FENWICK & WEST LLP**  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Telephone: 650.988.8500  
Facsimile: 650.938.5200  
30  
31 DARGAYE CHURNET (CSB No. 303659)  
32 dchurnet@fenwick.com  
33  
34

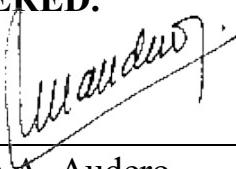
1 CHRISTOPHER LAVIN (CSB No. 301702)  
2 clavin@fenwick.com  
3 PATRICK DOYLE (CSB No. 329810)  
4 pdoyle@fenwick.com  
5 **FENWICK & WEST LLP**  
6 555 California Street, 12th Floor  
7 San Francisco, CA 94104  
8 Telephone: 415.875.2300  
9 Facsimile: 415.281.1350

10 JEFFREY A. WARE (CSB No. 271603)  
11 jware@fenwick.com  
12 **FENWICK & WEST LLP**  
13 1191 Second Avenue, 10th Floor  
14 Seattle, WA 98101  
15 Telephone: 206.389.4510  
16 Facsimile: 206.389.4511

17 OLIVIA L. WHEELING  
18 (*pro hac vice*)  
19 owheeling@fenwick.com  
20 **FENWICK & WEST LLP**  
21 902 Broadway, Suite 14  
22 New York, NY 10010-6035  
23 Telephone: 212.430.2600  
24 Facsimile: 415.381.2850  
25 **Counsel for Defendant**

26 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

27 Dated: August 31, 2022

28   
\_\_\_\_\_  
Maria A. Audero  
United States Magistrate Judge

## **EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [full name], of \_\_\_\_\_  
[address], declare under penalty of perjury that I have read in its  
ty and understand the Stipulated Protective Order that was issued by the  
d States District Court for the Central District of California on \_\_\_\_\_  
in the case of \_\_\_\_\_  
name and number]. I agree to comply with and to be bound by all the terms  
s Stipulated Protective Order, and I understand and acknowledge that failure  
comply could expose me to sanctions and punishment in the nature of  
mpt. I solemnly promise that I will not disclose in any manner any  
mation or item that is subject to this Stipulated Protective Order to any person  
ity except in strict compliance with the provisions of this Stipulated Protective  
:

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [full name] of \_\_\_\_\_ [address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Signature:

Printed Name:

Date:

**City and State Where Sworn and Signed:**

1                   **ATTESTATION REGARDING E-SIGNATURES**

2                   Pursuant to Local Rule 5-4.3.4, I hereby attest that I have obtained concurrence  
3 in the filing of this document from each signatory whose signature is indicated by a  
4 conformed signature (/s/) within this e-filed document.

5                   By: /s/ Gary A. Hecker  
6                   Gary A. Hecker

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that on August 12, 2022, I electronically filed the foregoing Stipulated Protective Order with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

Dated: August 12, 2022

By: /s/ Gary A. Hecker  
Gary A. Hecker